

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 122

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO ENERGY ENTERPRISE ZONES; AMENDING TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 18, TITLE 61, IDAHO CODE, TO PROVIDE LEGISLATIVE PURPOSE, TO DEFINE TERMS, TO PROVIDE ADMINISTRATION, TO PROVIDE FOR RENEWABLE ENERGY ENTERPRISE ZONE DESIGNATION, TO PROVIDE STATE TAX INCENTIVES AND TO PROVIDE TERMINATION OF RENEWABLE ENERGY ENTERPRISE ZONES; AMENDING SECTION 63-2401, IDAHO CODE, TO REVISE THE DEFINITION OF SPECIAL FUEL AND TO MAKE A TECHNICAL CORRECTION; AMENDING CHAPTER 30, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3029H, IDAHO CODE, TO PROVIDE FOR AN INCOME TAX CREDIT FOR ALTERNATIVE ENERGY GENERATION OF ELECTRICITY FOR SIX TAXABLE YEARS, TO PROVIDE THE AMOUNT OF THE CREDIT, TO PROVIDE PROCEDURES, TO DEFINE TERMS AND TO PROVIDE FOR CARRYOVER AUTHORITY; AMENDING SECTION 63-3029B, IDAHO CODE, TO PROVIDE THAT TAXPAYERS MAKING EXPENDITURES FOR QUALIFIED ALTERNATIVE ENERGY GENERATION EQUIPMENT ARE ENTITLED TO THE INCOME TAX CREDIT FOR CAPITAL INVESTMENT; AMENDING CHAPTER 30, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3029Q, IDAHO CODE, TO PROVIDE AN INCOME TAX CREDIT FOR CERTAIN EXPENDITURES RELATING TO INVESTMENT IN ALTERNATIVE ENERGY GENERATION EQUIPMENT, TO PROVIDE A SUNSET DATE, TO PROVIDE DEFINITIONS, TO PROVIDE A CARRYOVER OF UNUSED CREDITS AND TO PROVIDE PROCEDURES; AMENDING CHAPTER 6, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-6020O, IDAHO CODE, TO PROVIDE A PROPERTY TAX EXEMPTION FOR CERTAIN PROPERTY IN A RENEWABLE ENERGY ENTERPRISE ZONE; PROVIDING SEVERABILITY; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 61, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 18, Title 61, Idaho Code, and to read as follows:

CHAPTER 18

RENEWABLE ENERGY ENTERPRISE ZONES

61-1801. PURPOSE. The purpose of this chapter is to reduce the state's dependence on imported oil and increase the state's energy self-sufficiency by providing for the establishment of renewable energy enterprise zones.

61-1802. DEFINITIONS. As used in this chapter:

(1) "Biofuel producer" means a person that manufactures liquid or gaseous transportation or heating fuel from crops, crop residue, food processing waste, woody materials, animal waste and other biological materials.

(2) "Commission" means the public utilities commission.

(3) "Establishment" means a single physical location where biofuel is produced or electric energy is generated from a renewable source. A qualified business may include one (1) or more establishments, any number of which may be in a renewable energy enterprise zone.

(4) "Nonutility generator" means a person that produces electric power but is not an energy utility, including any person who:

(a) Controls, operates or manages plants or facilities for the production, transmission or furnishing of power, whether in whole or in part, from any nonfossil fuel or renewable energy sources; and

(b) Provides, sells or transmits any or all of that power, either directly or indirectly to an energy utility for transmission to the public.

(5) "Person" is defined in section 61-105, Idaho Code.

(6) "Promoted technology" means proven and commercially available renewable energy technologies for production of biofuels or electricity.

(7) "Qualified business" means any biofuels producer or nonutility generator that is:

(a) Authorized to do business in this state;

(b) Doing business in a renewable energy enterprise zone; and

(c) Creating skilled jobs in a renewable energy enterprise zone.

(8) "Renewable energy enterprise zone" means an area nominated by a county or adjacent counties, and within the jurisdiction of the nominating county or counties and declared by the commission for the benefits of this chapter.

61-1803. ADMINISTRATION. The commission shall administer the provisions of this chapter and have the power and duty to:

(1) Monitor the implementation and operation of this chapter;

(2) Conduct a continuing evaluation program of renewable energy enterprise zones;

(3) Assist counties in implementing renewable energy enterprise zones;

(4) Submit annual reports evaluating the effectiveness of the program and any recommendations for legislation to the legislature and the governor; and

(5) Administer this chapter in such a manner that the area to be designated as a renewable energy enterprise zone will most benefit the area and the state.

61-1804. RENEWABLE ENERGY ENTERPRISE ZONE DESIGNATION. Renewable energy enterprise zones shall be created according to the process provided in this section.

(1) The county commissioners of any county may apply in writing to the commission to have an area declared to be a renewable energy enterprise zone. The application shall include a description of the location of the area or areas in question, and a general statement identifying proposed local incentives to complement the state and any federal incentives.

(2) The commission shall approve the designation of up to twenty (20) areas in Idaho as renewable energy enterprise zones for a period of twenty (20) years. The commission shall adopt rules setting forth appropriate standards for the designation of renewable energy enterprise zones. Factors to be incorporated into such rules are:

- (a) Promotion of economic development in rural Idaho communities;
- (b) Promotion of renewable energy development in Idaho;
- (c) Available transmission for electricity and transportation, including pipelines, for biofuels;
- (d) Zoning and land use policies that accommodate the promoted technologies;
- (e) Demonstrated public support for transmission, pipelines and other infrastructure improvements necessary for implementation of promoted technologies;
- (f) Engagement in the work force development needed to operate the promoted technologies and assist in their construction; and
- (g) Offer of local tax incentives and financing.

(3) Notwithstanding the method of renewable energy enterprise zone creation stated in subsections (1) and (2) of this section, for calendar years 2009 through 2011, the only renewable energy enterprise zones created under this chapter shall be the initial pilot zones created pursuant to this section.

(4) There shall be opportunity to create three (3) renewable energy enterprise zones created in Idaho. One (1) shall promote producers who implement the following promoted technologies: Energy from animal manure whether for heating, electric generation or compressed for vehicle fueling. The promoted technology may consist of energy production through animal manure anaerobic digestion; cleaning and preparation facilities to produce natural gas pipeline quality fuel; or other energy. This pilot renewable energy enterprise zone shall be located within counties that contain or are within forty (40) miles of a navigable river and contain businesses with a total of five thousand (5,000) or more head of cattle. For purposes of this promoted technology, the term "qualified business" includes a dairy cooperative or one (1) or more dairies working in a cooperative mode. Two (2) additional enterprise zones shall be authorized to promote the production of energy through biomass, wood waste, wind, solar, geothermal or low impact hydro as defined in section 63-3029Q(3)(c), Idaho Code. One (1) of these zones shall be authorized within the boundaries of Idaho judicial districts 1 and 2 and another zone shall be authorized within the boundaries of Idaho judicial districts 6 and 7.

61-1805. STATE TAX INCENTIVES. Qualified businesses engaged in promoted technologies located in renewable energy enterprise zones are deemed to be qualified for Idaho investment tax credits pursuant to sections 63-3029B, 63-3029H and 63-3029Q, Idaho Code, and the property tax exemption pursuant to section 63-602OO, Idaho Code, and subject to all rights and limitations stated in those sections.

61-1806. TERMINATION OF RENEWABLE ENERGY ENTERPRISE ZONES. Upon designation of an area as a renewable energy enterprise zone, the commitments made in the application to the commission shall be binding upon the counties involved to the extent and for the period of time specified in the application for zone designation. If the counties are unable or unwilling to provide any of the incentives set forth in the application or other incentives acceptable to the commission, then the renewable energy enterprise zone shall terminate. Qualified businesses located in a renewable energy enterprise zone shall be eligible to receive the state tax incentives provided by this chapter even though the zone designation has terminated. No biofuel producer or nonutility generator may become a qualified business after the date of zone termination. The counties involved may amend an application submitted

1 with the approval of the commission; provided that the amended application proposes an  
2 incentive equal to or superior to the initial application.

3 SECTION 2. That Section 63-2401, Idaho Code, be, and the same is hereby amended to  
4 read as follows:

5 63-2401. DEFINITIONS. In this chapter:

6 (1) "Aircraft engine fuel" means:

7 (a) Aviation gasoline, defined as any mixture of volatile hydrocarbons used in aircraft  
8 reciprocating engines; and

9 (b) Jet fuel, defined as any mixture of volatile hydrocarbons used in aircraft turbojet and  
10 turboprop engines.

11 (2) "Biodiesel" means any fuel that is derived in whole or in part from agricultural  
12 products or animal fats or the wastes of such products and is suitable for use as fuel in diesel  
13 engines.

14 (3) "Biodiesel blend" means any fuel produced by blending biodiesel with  
15 petroleum-based diesel to produce a fuel suitable for use in diesel engines.

16 (4) "Bond" means:

17 (a) A surety bond, in an amount required by this chapter, duly executed by a surety  
18 company licensed and authorized to do business in this state conditioned upon faithful  
19 performance of all requirements of this chapter, including the payment of all taxes,  
20 penalties and other obligations arising out of the provisions of this chapter; or

21 (b) A deposit with the commission by any person required to be licensed pursuant to this  
22 chapter under terms and conditions as the commission may prescribe, of a like amount of  
23 lawful money of the United States or bonds or other obligations of the United States, the  
24 state of Idaho, or any county of the state; or

25 (c) An irrevocable letter of credit issued to the commission by a bank doing business in  
26 this state payable to the state upon failure of the person on whose behalf it is issued to  
27 remit any payment due under the provisions of this chapter.

28 (5) "Commercial motor boat" means any boat, equipped with a motor, which is wholly or  
29 partly used in a profit-making enterprise or in an enterprise conducted with the intent of making  
30 a profit.

31 (6) "Commission" means the state tax commission of the state of Idaho.

32 (7) "Distributor" means any person who receives motor fuel in this state, and includes  
33 a special fuels dealer. Any person who sells or receives gaseous fuels will not be considered  
34 a distributor unless the gaseous fuel is delivered into the fuel supply tank or tanks of a motor  
35 vehicle not then owned or controlled by him.

36 (8) "Dyed fuel" means diesel fuel that is dyed pursuant to requirements of the internal  
37 revenue service, or the environmental protection agency.

38 (9) "Exported" means delivered by truck or rail across the boundaries of this state by or  
39 for the seller or purchaser from a place of origin in this state.

40 (10) "Gasohol" means gasoline blended with ten percent (10%) or more of anhydrous  
41 ethanol.

42 (11) "Gasoline" means any mixture of volatile hydrocarbons suitable as a fuel for the  
43 propulsion of motor vehicles or motor boats. "Gasoline" also means aircraft engine fuels when  
44 used for the operation or propulsion of motor vehicles or motor boats and includes gasohol, but  
45 does not include special fuels.

(12) "Highways" means every place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel which is maintained by the state of Idaho or an agency or taxing subdivision or unit thereof or the federal government or an agency or instrumentality thereof. Provided, however, if the cost of maintaining a roadway is primarily borne by a special fuels user who operates motor vehicles on that roadway pursuant to a written contract during any period of time that a special fuels tax liability accrues to the user, such a roadway shall not be considered a "highway" for any purpose related to calculating that user's special fuels' tax liability or refund.

(13) "Idling" means the period of time greater than twenty-five hundredths (.25) of an hour when a motor vehicle is stationary with the engine operating at less than one thousand two hundred (1,200) revolutions per minute (RPM), without the power take-off (PTO) unit engaged, with the transmission in the neutral or park position, and with the parking brake set.

(14) "Imported" means delivered by truck or rail across the boundaries of this state by or for the seller or purchaser from a place of origin outside this state.

(15) "International fuel tax agreement" and "IFTA" mean the international fuel tax agreement required by the intermodal surface transportation efficiency act of 1991, Public Law 102-240, 105 Stat. 1914, and referred to in title 49, U.S.C., section 31701, including subsequent amendments to that agreement.

(16) "Jurisdiction" means a state of the United States, the District of Columbia, a province or territory of Canada, or a state, territory or agency of Mexico in the event that the state, territory or agency participates in the international fuel tax agreement.

(17) "Licensed distributor" means any distributor who has obtained a license under the provisions of section 63-2427A, Idaho Code.

(18) "Motor fuel" means gasoline, special fuels, aircraft engine fuels or any other fuels suitable for the operation or propulsion of motor vehicles, motor boats or aircraft.

(19) "Motor vehicle" means every self-propelled vehicle designed for operation, or required to be licensed for operation, upon a highway.

(20) "Person" means any individual, firm, fiduciary, copartnership, association, limited liability company, corporation, governmental instrumentality including the state and all of its agencies and political subdivisions, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intent to give a more limited meaning is disclosed by the context. Whenever used in any clause prescribing and imposing a fine or imprisonment, or both, the term "person" as applied to an association means the partners or members, and as applied to corporations, the officers.

(21) "Recreational vehicle" means a snowmobile as defined in section 67-7101, Idaho Code; a motor driven cycle or motorcycle as defined in section 49-114, Idaho Code; any recreational vehicle as defined in section 49-119, Idaho Code; and an all-terrain vehicle as defined in section 67-7101, Idaho Code.

(22) "Retail dealer" means any person engaged in the retail sale of motor fuels to the public or for use in the state.

(23) "Special fuels" means:

(a) All fuel suitable as fuel for diesel engines;

(b) A compressed or ~~liquefied~~ liquefied gas obtained as a byproduct in petroleum refining or natural gasoline manufacture, such as butane, isobutane, propane, propylene, butylenes, and their mixtures; ~~and~~

(c) Natural gas, either liquid or gas, and hydrogen, used for the generation of power for the operation or propulsion of motor vehicles; and

(d) Fuel produced in a renewable energy enterprise zone pursuant to chapter 18, title 61, Idaho Code.

(24) "Special fuels dealer" means "distributor" under subsection (6) of this section.

(25) "Special fuels user" means any person who uses or consumes special fuels for the operation or propulsion of motor vehicles owned or controlled by him upon the highways of this state.

(26) "Use" means either:

(a) The receipt, delivery or placing of fuels by a licensed distributor or a special fuels dealer into the fuel supply tank or tanks of any motor vehicle not owned or controlled by him while the vehicle is within this state; or

(b) The consumption of fuels in the operation or propulsion of a motor vehicle on the highways of this state.

SECTION 3. That Chapter 30, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 63-3029H, Idaho Code, and to read as follows:

63-3029H. INCOME TAX CREDIT FOR ALTERNATIVE ENERGY GENERATION OF ELECTRICITY. (1) For taxable years beginning between January 1, 2009, and December 31, 2014, at the election of the taxpayer, there shall be allowed, subject to the applicable limitations provided herein, a credit against the income tax imposed by chapter 30, title 63, Idaho Code, of one-half of one cent (0.5¢) per kilowatt hour of electric energy generated by the taxpayer by alternative methods from a plant or hydropower facility that was constructed on or after January 1, 2009, and prior to January 1, 2014, in a renewable energy enterprise zone pursuant to chapter 18, title 61, Idaho Code. In order to qualify for the credit pursuant to this section, each and every individual, firm, partnership, common law trust, corporation, association or other organization, now engaged or hereafter to engage in the generation, manufacture or production of electricity and electrical energy in the state of Idaho, through and by means of alternative methods, for barter, sale or exchange, and hereinafter referred to as the "producer" shall, on or before the last day of each calendar quarter, render a statement to the state tax commission of all such electricity and electrical energy so generated, manufactured or produced by him or it in the state of Idaho, during the preceding calendar quarter. As used in this section, generation of electrical energy by alternative methods shall mean generation from biomass, waste, renewable resources including, but not limited to, solar, wind, low impact hydro and pumped storage, geothermal resources, cogeneration or any combination thereof. As used herein, low impact hydro shall mean an electric generating facility utilizing water for the generation of electricity, housed in a canal or reservoir and not having a power production capacity greater than fifty (50) megawatts.

(2) The total credit allowed in this section and all other credits allowed under this chapter except for the credits allowed under section 63-3029, Idaho Code, shall not exceed fifty percent (50%) of the tax liability of the taxpayer. The tax liability of the taxpayer shall be the tax after deducting the credit allowed by section 63-3029, Idaho Code.

(3) If the sum of the credit carryovers from the credit allowed in subsection (2) of this section and the amount of credit for the taxable year from the credit allowed in subsection (2) of this section exceed the limitation imposed in subsection (2) of this section for the

current taxable year, the excess attributable to the current taxable year's credit shall be a credit carryover to the three (3) succeeding taxable years. The entire amount of unused credit shall be carried forward to the earliest of the succeeding years, wherein the oldest available unused credit shall be used first.

SECTION 4. That Section 63-3029B, Idaho Code, be, and the same is hereby amended to read as follows:

63-3029B. INCOME TAX CREDIT FOR CAPITAL INVESTMENT. (1) At the election of the taxpayer there shall be allowed, subject to the applicable limitations provided herein as a credit against the income tax imposed by chapter 30, title 63, Idaho Code, an amount equal to the sum of:

- (a) The tax credit carryovers; and
- (b) The tax credit for the taxable year.
- (2) The maximum allowable amount of the credit for the current taxable year shall be three percent (3%) of the amount of qualified investments made during the taxable year.
- (3) As used in this section "qualified investment" means certain property which:
  - (a) (i) Is eligible for the federal investment tax credit, as defined in sections 46(c) and 48 of the Internal Revenue Code subject to the limitations provided for certain regulated companies in section 46(f) of the Internal Revenue Code and is not a motor vehicle under eight thousand (8,000) pounds gross weight; or
  - (ii) Is qualified broadband equipment as defined in section 63-3029I, Idaho Code;
  - or
  - (iii) Is qualified alternative energy generation equipment as provided in section 63-3029Q, Idaho Code, and located in a renewable energy enterprise zone pursuant to chapter 18, title 61, Idaho Code; and
  - (b) Is acquired, constructed, reconstructed, erected or placed into service after December 31, 1981; and
  - (c) Has a situs in Idaho.
- (4) (a) For qualified investments placed in service in 2003 and thereafter, a taxpayer, other than a person whose rate of charge or rate of return, or both, is regulated or limited according to federal or state law, may elect, in lieu of the credit provided by this section, a two (2) year exemption from all taxes on personal property on the qualified investment. The exemption from personal property tax shall apply to the year the election is filed as provided in this section and the immediately following year. The election provided by this paragraph is available only to a taxpayer whose Idaho taxable income, before application of net operating losses carried back or forward, in the second preceding taxable year in which the investment is placed in service is negative.
- (b) The election shall be made in the form prescribed by the state tax commission and shall include a specific description and location of all qualified investments placed into service and located in the jurisdiction of the assessing authority, a designation of the specific assets for which the exemption is claimed, and such other information as the state tax commission may require. The election must be made by including the election form with the listing of personal property required by section 63-302, Idaho Code, or, in the case of operating property assessed under chapter 4, title 63, Idaho Code, with the operator's statement required by section 63-404, Idaho Code. Once made the election is irrevocable. If no election is made, the election is not otherwise available. A copy of the

election form must also be attached to the original income tax return due for the taxable year in which the claim was made.

(c) The state tax commission and the various county assessors are authorized to exchange information as necessary to properly coordinate the exemption provided in this subsection. Information disclosed to county officials under this subsection may be used only to determine the validity or amount of a taxpayer's entitlement to the exemption provided in this section, and is not otherwise subject to public disclosure as provided in section 9-340D, Idaho Code.

(d) In the event that an investment in regard to which the election under this subsection was made is determined by the state tax commission:

- (i) To not be a qualified investment, or
- (ii) To have ceased to qualify during the recapture period, or
- (iii) To be otherwise not qualified for the election,

the taxpayer shall be subject to recapture of the property tax benefit.

(e) The benefit to be recaptured in subsection (4)(d) of this section shall be computed in the manner required in subsection (7) of this section and such recapture amount shall be subject to assessment in the same manner as a deficiency in tax under this chapter. For purposes of calculating the recapture, the property tax benefit shall be:

- (i) In the case of locally assessed property located in a single county or nonapportioned centrally assessed property, the market value of exempted property times the average property tax levy for that county in the year or years for which the exemption was claimed.
- (ii) In the case of other centrally assessed property and property located in more than one (1) county, the market value of exempted property times the average urban property tax levy of the state as determined by the state tax commission in each of the years for which the exemption was claimed.

(f) In the event that a recapture of the exemption is required under this subsection (4), the person claiming the exemption shall report the event to the state tax commission in the manner the state tax commission may by rule require. The report shall be due no later than the due date of that person's income tax return under this chapter for the taxable year in which the event occurs. The recapture amount is due and payable with the report. Any amount of recapture not paid is a deficiency within the meaning of section 63-3044, Idaho Code.

(g) All moneys collected by the state tax commission pursuant to this subsection, which amounts are continuously appropriated for this purpose, shall be deposited with the state treasurer and placed in the state refund account, as provided by section 63-3067, Idaho Code, to be remitted to the county within which the property was located that was not a qualified investment or ceased to qualify during the recapture period. The county shall distribute this remittance to all appropriate taxing districts based on the proportion each appropriate taxing district's levy is to the total of all the levies of the taxing districts for the tax code area where the property was located for each year the exemption was granted. If any taxing district is dissolved or disincorporated, the proportionate share of the remittance to be distributed to that taxing district shall be deposited in the county current expense fund.



(h) For purposes of the limitation provided by section 63-802, Idaho Code, moneys received pursuant to this subsection shall be treated as property tax revenue by taxing districts.

(5) Notwithstanding the provisions of subsections (1) and (2) of this section, the amount of the credit allowed shall not exceed fifty percent (50%) of the tax liability of the taxpayer. The tax liability of the taxpayer shall be the tax after deducting the credit allowed by section 63-3029, Idaho Code.

(6) If the sum of credit carryovers from the credit allowed by subsection (2) of this section and the amount of credit for the taxable year from the credit allowed by subsection (2) of this section exceed the limitation imposed by subsection (5) of this section for the current taxable year, the excess attributable to the current taxable year's credit shall be an investment credit carryover to the fourteen (14) succeeding taxable years. In the case of a group of corporations filing a combined report under section 63-3027, Idaho Code, or sections 63-3027B through 63-3027E, Idaho Code, credit earned by one (1) member of the group but not used by that member may be used by another member of the group, subject to the provisions of subsection (5) of this section, instead of carried over. The entire amount of unused credit shall be carried forward to the earliest of the succeeding years, wherein the oldest available unused credit shall be used first, so long as the qualified investment property for which the unused credit was granted still maintains Idaho situs. For a combined group of corporations, credit carried forward may be claimed by any member of the group unless the member who earned the credit is no longer included in the combined group.

(7) Any recapture of the credit allowed by subsection (2) of this section on property disposed of or ceasing to qualify, prior to the close of the recapture period, shall be determined according to the applicable recapture provisions of the Internal Revenue Code. In the case of a unitary group of corporations, the increase in tax due to the recapture of investment tax credit must be reported by the member of the group who earned the credit regardless of which member claimed the credit against tax.

(8) For the purpose of determining whether property placed in service is a "qualified investment" as defined in subsection (3) of this section, the provisions of section 49 of the Internal Revenue Code shall be disregarded. "Qualified investment" shall not include any amount for which a deduction is allowed under section 168(k) or section 179 of the Internal Revenue Code in computing taxable income.

(9) For purposes of this section, property has a situs in Idaho during a taxable year if it is used in Idaho at any time during the taxable year. Property not used in Idaho during a taxable year does not have a situs in Idaho in the taxable year during which the property is not used in Idaho or in any subsequent taxable year. No credit or carryover of credit is permitted under this section if the credit or carryover relates to property that does not have a situs in Idaho during the taxable year for which the credit or carryover is claimed. The Idaho situs of property must be established by records maintained by the taxpayer which are created reasonably contemporaneously with the use of the property.

(10) In the case of property used both in and outside Idaho, the taxpayer, electing to claim the credit provided in this section, must elect to compute the qualified investment in property with a situs in Idaho for all such investments first qualifying during that year in one (1), but only one (1), of the following ways:

(a) The amount of each qualified investment in a specific asset shall be separately computed based on the percentage of the actual use of the property in Idaho by using

a measure of the use, such as total miles or total machine hours, that most accurately reflects the beneficial use during the taxable year in which it is first acquired, constructed, reconstructed, erected or placed into service; provided, that the asset is placed in service more than ninety (90) days before the end of the taxable year. In the case of assets acquired, constructed, reconstructed, erected or placed into service within ninety (90) days prior to the end of the taxable year in which the investment first qualifies, the measure of the use of that asset within Idaho for that year shall be based upon the percentage of use in Idaho during the first ninety (90) days of use of the asset;

(b) The investment in qualified property used both inside and outside Idaho during the taxable year in which it is first acquired, constructed, reconstructed, erected or placed into service shall be multiplied by the percent of the investment that would be included in the numerator of the Idaho property factor determined pursuant to section 63-3027, Idaho Code, for the same year.

(11) Only for the purposes of subsections (3)(a) and (8) of this section, references to sections of the "Internal Revenue Code" mean the sections referred to as they existed in the Internal Revenue Code of 1986 prior to November 5, 1990.

SECTION 5. That Chapter 30, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 63-3029Q, Idaho Code, and to read as follows:

63-3029Q. INCOME TAX CREDIT FOR INVESTMENT IN ALTERNATIVE ENERGY GENERATION EQUIPMENT LOCATED IN A RENEWABLE ENERGY ENTERPRISE ZONE. (1) Subject to the limitations of this section, for taxable years beginning between January 1, 2009, and December 31, 2014, inclusive, there shall be allowed to a taxpayer a nonrefundable credit against taxes imposed by sections 63-3024, 63-3025 and 63-3025A, Idaho Code, for qualified expenditures in qualified alternative energy generation equipment in a renewable energy enterprise zone pursuant to chapter 18, title 61, Idaho Code, in Idaho.

(2) The credit permitted in subsection (1) of this section shall be five percent (5%) of the qualified investment in qualified alternative energy generation equipment in a renewable enterprise zone pursuant to chapter 18, title 61, Idaho Code, in Idaho and shall be in addition to the credit for capital investment permitted in section 63-3029B, Idaho Code.

(3) As used in this section:

(a) "Qualified investment" shall be defined in section 63-3029B, Idaho Code.

(b) "Qualified alternative energy generation equipment" means equipment that:

(i) Qualifies for the credit for capital investment permitted in section 63-3029B, Idaho Code;

(ii) Is capable of producing energy, electricity, pipeline quality natural gas or other biofuel from biomass, waste, renewable resources including, but not limited to, woody biomass, solar, wind, low impact hydro and pumped storage, geothermal resources, or any combination thereof;

(iii) Does not receive more than twenty-five percent (25%) of its total annual energy input from oil, propane, natural gas or coal that may be used only for ignition, start-up, testing, flame stabilization or to prevent outages.

(c) "Low impact hydro" means an electric generating facility utilizing water for the generation of electricity housed in an existing canal or reservoir and not having a power production capacity of greater than fifty (50) megawatts.

(4) No equipment described in subsection (3)(b) of this section shall qualify for the credit provided in subsection (1) of this section until the taxpayer applies for and obtains an order from the Idaho public utilities commission confirming that the installed equipment is qualified alternative energy generation equipment in a renewable energy enterprise zone. Applications submitted to the public utilities commission shall be governed by the public utilities commission's rules of procedure. The public utilities commission may issue procedural orders necessary to implement the provisions of this section.

(5) The credit allowed in subsection (1) of this section, together with any credits carried forward under subsection (7) of this section, shall not, in any one (1) taxable year, exceed the lesser of:

(a) The amount of tax due under sections 63-3024, 63-3025 and 63-3025A, Idaho Code, after allowance for all other credits permitted by this chapter; or

(b) Seven hundred fifty thousand dollars (\$750,000).

When credits earned in more than one (1) taxable year are available, the oldest credits shall be applied first.

(6) In the case of a group of corporations filing a combined report under subsection (t) of section 63-3027, Idaho Code, credit earned by one (1) member of the group but not used by that member may be used by another member of the group, subject to the provisions of subsection (7) of this section, instead of carried over. For a combined group of corporations, credit carried forward may be claimed by any member of the group unless the member who earned the credit is no longer included in the combined group.

(7) If the credit allowed in subsection (1) of this section exceeds the limitation under subsection (5) of this section, the excess amount may be carried forward for a period that does not exceed the next fourteen (14) taxable years.

(8) In the event that qualified alternative energy generation equipment in a renewable energy enterprise zone upon which the credit allowed by this section has been used ceases to qualify for the credit allowed in section 63-3029B, Idaho Code, or is subject to recapture of that credit, the recapture of credit under this section shall be in the same proportion and subject to the same provisions as the amount of credit required to be recaptured under section 63-3029B, Idaho Code.

(9) In addition to other needed rules, the state tax commission may promulgate rules prescribing, in the case of S corporations, partnerships, trusts or estates, a method of attributing the credit under this section to the shareholders, partners or beneficiaries in proportion to their share of the income from the S corporation, partnership, trust or estate.

SECTION 6. That Chapter 6, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 63-60200, Idaho Code, and to read as follows:

63-60200. PROPERTY EXEMPT FROM TAXATION – CERTAIN PROPERTY IN RENEWABLE ENERGY ENTERPRISE ZONES. The following property is exempt from taxation: property in a renewable energy enterprise zone pursuant to chapter 18, title 61, Idaho Code, which property is used to produce fuel or electricity for consumption. Such property shall not be included on the new construction roll.

1       SECTION 7. The provisions of this act are hereby declared to be severable and if any  
2 provision of this act or the application of such provision to any person or circumstance is  
3 declared invalid for any reason, such declaration shall not affect the validity of the remaining  
4 portions of this act.

5       SECTION 8. An emergency existing therefor, which emergency is hereby declared to  
6 exist, this act shall be in full force and effect on and after its passage and approval, and  
7 retroactively to January 1, 2009.